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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

Martina G., Petitioner, v. THE SUPERIOR COURT OF CONTRA COSTA COUNTY, Respondent; CONTRA COSTA COUNTY CHILDREN & FAMILY SERVICES BUREAU et al., Real Parties in Interest.	A156135 (Contra Costa County Super. Ct. Nos. J18-00049 and 18-00050)

Martina G. (Mother) petitions this court for extraordinary relief from dependency court orders that terminated her reunification services after six months and set a hearing under Welfare and Institutions Code[1] section 366.26 to select permanent plans for her children. Arguing that services should have been extended to the 12-month date, Mother claims the court erred in finding that reasonable services were provided to her. Because we agree there is not substantial evidence to support the finding, we shall grant Mother's petition.

FACTUAL AND PROCEDURAL BACKGROUND

In January 2018, the Contra Costa County Children and Family Services Bureau (Bureau) filed petitions under section 300, subdivision (b)(1), on behalf of Mother's

[1] Further unspecified statutory references are to the Welfare and Institutions Code.

newborn daughter (Daughter) and 9-year-old son (Son). The petitions made identical allegations that the children were at risk because of Mother's chronic substance abuse, serious and untreated mental illness, and involvement with the children's father (Father) in a relationship that was characterized by domestic violence in front of the children. With respect to mental illness, the petition alleged that Mother had been diagnosed with "bipolar type two, depression, and post-traumatic stress disorder for which she stopped her prescription medication without input from prescribing physician," and that Mother was "not actively utilizing mental health services to address" the diagnoses.

According to the Bureau's Detention/Jurisdiction Report, Daughter tested positive at birth for methamphetamine and Mother admitted using methamphetamine just before the birth. Daughter was released from the hospital to her parents because she showed no signs of withdrawal and because parents signed a safety plan agreement under which they were to remain sober and drug free, and if they chose to use substances, they were to leave the house, leaving the children with Mother's mother or uncle. Less than two weeks after Daughter was born, concerns arose about whether the parents were following the safety plan, and the children were detained. A detention hearing was held on January 12, 2018. The jurisdiction hearing was continued to allow Mother to participate in mediation; eventually a contested hearing was held in April. Mother pleaded no contest to all the allegations pertaining to her in the petition, and the dependency court sustained them.

At the disposition hearing in May 2018, the court ordered that the children remain in foster care, and denied reunification services to Father, who is not a party to this appeal. The court ordered visitation for Mother, and reunification services including domestic violence counseling, parenting classes, a substance abuse program approved by the social worker, random drug testing, and attendance at NA/AA meetings one to three times per week. The court scheduled a review hearing for October 2018, which was continued to November 2018.

The Bureau submitted a Status Review Report in advance of the November 2018 hearing date, recommending the court terminate reunification services and set a section

366.26 hearing. According to the report, Mother attempted to address the concerns leading to the removal of the children by completing inpatient drug treatment and partially participating in outpatient treatment. She was currently employed. Although Mother reported she was clean and sober, she was not regularly drug testing or participating in outpatient treatment, had not produced any NA/AA sign-in sheets, and did not attend domestic violence classes or counseling, despite the requirements of her case plan. She felt that becoming clean and sober, along with her participation in drug treatment programs, was enough. She told the Bureau she was unaware of the effects of domestic violence and drugs on her children. She also reported she was in a "long distance relationship" with Father, and was 16 weeks pregnant with his baby. By two weeks before the scheduled November hearing, Mother had enrolled in outpatient drug services and domestic violence classes.

At Mother's request, a contested review hearing was set for December 2018. The Bureau submitted an update memo in advance of the hearing, reporting that Mother had begun weekly domestic violence classes, and had attended for the last three weeks. She was also attending outpatient substance abuse sessions, and had begun providing NA/AA sign-in sheets, showing that she was attending three to five meetings per week. The Bureau provided a summary of drug testing results, which showed that Mother had tested regularly starting on November 6, 2018, and had four consecutive negative tests, with results pending for the two most recent tests.

At the December 2018 hearing, Mother's counsel argued that Mother was fully engaged in services, and had been for about six weeks. The dependency court judge noted that Mother "looks a little different today, certainly acts different today, but she has only been in services a little over a month. [¶] This case—these children were detained in January of this year. This is too little, too late." The court found by clear and convincing evidence that reasonable services were offered to Mother; that Mother failed to participate regularly and make substantive progress in her court-ordered treatment plan; and that there was not a substantial probability that the children might be returned to her physical custody by March 9, 2019, even if services were extended to that date.

The court terminated Mother's reunification services, and scheduled a section 366.26 hearing for March 28, 2019.

Mother filed a petition for extraordinary relief, and we stayed the section 366.26 hearing.

DISCUSSION

A. *Applicable Law and Standard of Review*

" '[F]amily preservation is the first priority when dependency proceedings are commenced.' (*In re Lauren Z.* (2008) 158 Cal.App.4th 1102, 1112.) To that end, '[w]hen a child is removed from a parent's custody, the juvenile court ordinarily must order child welfare services for the minor and the parent for the purpose of facilitating reunification of the family.' (*Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 843 . . .; see § 361.5, subd. (a).)" (*M.V. v. Superior Court* (2008) 167 Cal.App.4th 166, 174 (*M.V.*).) "The status of every dependent child in foster care shall be reviewed periodically as determined by the court but no less frequently than once every six months." (§ 366, subd. (a)(1).)

For a child who, like Daughter, was under the age of three when removed from her parent, or like Son, is part of a sibling group that includes a child under the age of three, "the presumptive rule . . . is that 'court-ordered services shall not exceed a period of six months from the date the child entered foster care.' (§ 361.5, subd. (a)(2); see *In re Christina A.* (2001) 91 Cal.App.4th 1153, 1160-1161." (*M.V., supra,* 167 Cal.App.4th at pp. 174-175.) For such children, section 366.21, subdivision (e)(3), requires specialized inquiries at the six-month review. "First, the statute identifies specific factual findings—failure to participate regularly and make substantive progress in the court-ordered treatment plan—that, if found by clear and convincing evidence, would *justify* the court in scheduling a .26 hearing to terminate parental rights." (*M.V.* at pp. 175-176.) "[T]his inquiry does not *require* the court to schedule a .26 hearing . . .[;] [i]nstead, it authorizes the court to set such a hearing if the required findings have been made." (*Id.* at p. 176.) The Bureau has the burden of proving failure to participate and make substantive progress in a treatment plan by clear and convincing evidence. (§ 366.21, subd. (e)(3).)

Section 366.21, subdivision (e)(3), also requires the dependency court to make inquiries that "protect[] parents and guardians against premature .26 hearings. Notwithstanding any findings made pursuant to the first determination, the court shall not set a .26 hearing if it finds either: (1) 'there is a substantial probability that the child . . . may be returned to his or her parent . . . within six months'; or (2) 'reasonable services have not been provided' to the parent." (*M.V., supra,* 167 Cal.App.4th at p. 176, quoting § 366.21, subd. (e).) "In other words, the court must continue the case to the 12-month review if it makes either of these findings . . . . The parent is also entitled to continued reunification services (with any necessary modifications) if the court makes either of these findings in favor of the parent." (*Id.* at p. 176.) The reasonable services determination requires the court to decide "whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child have been provided or offered to the parent or legal guardian." (§ 366.21, subd. (e)(8).) The Bureau has the burden of proving by clear and convincing evidence that reasonable services have been provided. (§ 366.21, subd. (g)(1)(C)(ii); *In re Monica C.* (1995) 31 Cal.App.4th 296, 306 [evidence of reasonable services " 'must be so clear as to leave no substantial doubt' "].)

We apply the substantial evidence standard in reviewing an order terminating reunification services. (*Fabian L. v. Superior Court* (2013) 214 Cal.App.4th 1018, 1028.) " 'Substantial evidence' is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value. [Citations.]" (*Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1424.) " 'Inferences may constitute substantial evidence, but they must be the product of logic and reason. Speculation or conjecture alone is not substantial evidence. [Citations.]' " (*Ibid.*) In determining whether the dependency court's order is supported by substantial evidence, " '[W]e review the record in the light most favorable to the court's determination and draw all reasonable inferences from the evidence to support the findings and orders. [Citation.] "We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient

facts to support the findings of the trial court." [Citation.]' (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688-689.)" (*Fabian L.*, *supra*, 214 Cal.App.4th at p. 1028.)

B. *Analysis*

Mother argues substantial evidence does not support the dependency court findings that reasonable services were provided, that she failed to participate regularly and make substantive progress in her treatment plan, and that there was not a substantial probability that the children would be returned to her within six months. As we shall explain, we conclude there is not substantial evidence to support the dependency court's finding that reasonable services were provided here, and therefore we need not reach Mother's other arguments.

An agency providing reunification services to a parent "must make a good faith effort to provide reasonable services responsive to the unique needs of each family, and the plan must be ' " 'specifically tailored to fit the circumstances of each family' " ' and ' " 'designed to eliminate those conditions which led to the juvenile court's jurisdictional finding.' " ' " (*Patricia W. v. Superior Court* (2016) 244 Cal.App.4th 397, 420. (*Patricia W.*), quoting *In re K.C. v. J.P.* (2012) 212 Cal.App.4th 323, 329.) "[T]he record must show the agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the duration of the service plan, and made reasonable efforts to assist the parents when compliance was difficult." (*Ibid.*) The agency must make the effort to provide reasonable services " ' "in spite of difficulties in doing so or the prospects of success." ' " (*Ibid.*) In particular, when the agency identifies a parent's mental illness as a problem leading to the loss of custody and the court so finds in exercising jurisdiction, then efforts to address the mental illness must be part of the family reunification plan. (*Id.* at pp. 420-422.)

Here, the Bureau alleged, and the court found, that Mother's failure to utilize mental health services to address her diagnosed illnesses put her children at risk of physical or emotional harm, but nothing in the record shows that the Bureau offered Mother any services intended to address the need for treatment of those illnesses. In

these circumstances, despite the fact that the Bureau provided services to address the domestic violence and substance abuse issues that led to the dependency court taking jurisdiction, there is no substantial evidence to support a finding by clear and convincing evidence that reasonable services were offered to Mother.

The Bureau concedes that Mother was not offered services to address her mental illnesses. Yet the Bureau opposes Mother's argument without addressing *Patricia W.* or citing any legal authority. Instead, the Bureau argues it was not required to offer services for Mother's mental illnesses because "Mother's substance abuse was the primary problem and reason for her children's removal from her care." This assertion is belied by the Detention/Jurisdiction Report, which stated there were "three main reasons" for the Bureau's concern that Mother could not protect the children, and listed the reasons in the following order: untreated mental health diagnoses, longstanding and untreated substance abuse, and domestic violence between Mother and Father. And the Bureau cites no authority holding that it is required to offer services only for the "primary problem" affecting the family.

The Bureau also argues that until Mother was clean and sober, it was "unable to assist with addressing her mental health *or the domestic violence*" (italics added). But this assertion is belied by the Bureau offering Mother domestic violence services from the start, along with drug treatment. Further, services must be offered to address the problems that led to the dependency court exercising jurisdiction, even if the services may be unsuccessful. (*Patricia W.*, *supra*, 244 Cal.App.4th at p. 420.)

Because substantial evidence does not support the dependency court's finding that the Bureau provided Mother reasonable services, the court erred in terminating services at the six-month review hearing. (§ 366.21, subd. (e)(3).)

DISPOSITION

Let a peremptory writ of mandate issue, directing respondent court to (1) vacate its findings that reasonable services were offered or provided to Mother; (2) vacate its December 20, 2018 orders terminating reunification services and setting a permanency

planning hearing under section 366.26; and (3) order the Bureau to provide further reunification services to Mother consistent with the views expressed in this opinion.

Our decision is final as to this court immediately. (Cal. Rules of Court, rules 8.450(a), 8.490(b)(2)(A).)

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Miller, J.

We concur:

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Kline, P.J.

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Stewart, J.

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